No. 06-1298

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IN THE
SUPREME COURT OF THE UNITED STATES

CONNOR BLAINE, THE DISTRICT ATTORNEY OF PHILADELPHIA COUNTY, THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA,
Petitioners

v.

MICHAEL PIERCE

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITIONERS' REPLY TO BRIEF IN OPPOSITION

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REPLY TO BRIEF IN OPPOSITION

I. The order below was not a "routine competency evaluation," as respondent's nominal counsel labors to characterize it, but a long-term, indefinite commitment to a prison psychiatric facility, which will subject the respondent to involuntary treatment as a mental patient – despite his insistent objections to such procedures and the repeated holdings of the state court that he is competent to understand the legal proceedings.

Respondent's current attorneys spend 25 out of their brief's 30 pages pleading "facts" that purport to show their client has been incompetent for the last twenty years, since before his trial. Relying primarily on prison records and defense-hired experts, the attorneys contend that respondent is delusional because he believes that prison guards have been assaulting him in bizarre ways, cutting his hair, and trying to poison him with prison food.

Of course counsel's representations ignore hundreds of pages in the records – as well as the conclusions of court-appointed experts and several of respondent's own prior lawyers – that run counter to incompetency. Nor do the allegations directly address respondent's ability to understand his legal position – which he has regularly and reasonably discussed on the record. And, most importantly, the assertions disregard the appraisal of the state judge who dealt with respondent, face to face, in numerous proceedings over the course of a decade -- a period coterminous with most of the attorneys' "evidence" of incompetence.

Be that as it may, however, the question before the Court is not whether respondent was incompetent to stand trial, or even whether he has subsequently become incompetent. The question is how to adjudicate the newly presented *claim* that respondent is and was incompetent. To the lower courts, the appropriate first step was to clap him into a prison psychiatric facility for (in the district court's own terms) a "long-term" "commitment."

That was wrong. What should have happened first was a hearing, at which the central subject, in the person of respondent himself, could have appeared and spoken on his own behalf, as he did in state court. His current lawyers, who were appointed on habeas review over respondent's objection, were free to seek intervention through a "next friend"; they are quite familiar with that procedure.[1] That would have left the court able to appoint respondent his own lawyer, one who would have represented the expressed desires of his client. Perhaps under such circumstances, and on the neutral ground of a federal courthouse, respondent might even have agreed to meet with a psychiatrist or psychologist. At the least, the district court would have had the benefit of hearing at least once from the most crucial witness.

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[1] *See, e.g., White v. Horn (In re Heidnik)*, 112 F.3d 105 (3rd Cir. 1997); *In re Moser*, 69 F.3d 691 (3rd Cir. 1995); *Devetsco v. Horn (In re Zettlemoyer)*, 53 F.3d 24 (3rd Cir. 1995); *Michael v. Horn*, 2004 U.S. Dist. LEXIS 3702 (M.D. Pa. 2004); *Commonwealth v. Saranchak*, 866 A.2d 292 (Pa. 2005); *Commonwealth v. Haag*, 809 A.2d 271 (Pa. 2002); *Commonwealth v. Bronshtein*, 792 A.2d 1102 (Pa. 1999); *see also Commonwealth v. Zook*, 887 A.2d 1218 (Pa. 2005).

What should not have happened was the Queen-of-Hearts approach employed below: commitment first, hearing after. Respondent's lawyers say that this commitment order amounted merely to "a routine competency evaluation," during which respondent would be subjected to nothing more intrusive than "observation." Brief in Opposition at 1. But then why even bother? Respondent has been under observation by prison mental health professionals, by prior counsel, and by the courts, for the better part of two decades. Indeed the reports already generated during this period provide the materials from which all the current allegations of incompetence have been selected.

Clearly, the open-ended commitment ordered by the district court will result in something considerably more onerous than just another "observation." The whole point of an involuntary commitment, after all, is to subject the individual to psychiatric intervention against his will. In respondent's case, he will be transferred from his current setting to a facility such as the State Correctional Institution at Waymart.[2] Waymart is a former state mental hospital now operated by the Pennsylvania Department of Corrections as its "Forensic Treatment Unit." While the department provides a full hierarchy of psychological services, Waymart is at the top of the scale. There respondent will be housed for some indefinite period with the most disturbed inmates in the state prison system. He will be subject to institutional protocols for inpatient psychiatric care and treatment. If, as his attorneys contend, respondent has

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[2] http://www.cor.state.pa.us/waymart/site/default.asp.

had delusional feelings of persecution by prison personnel, his long-term commitment is sure to confirm them.

Respondent's attorneys, citing *Rees v. Peyton*, 384 U.S. 312 (1966), insist that this Court has already authorized such pre-hearing commitments whenever defense lawyers claim the incompetence of their clients. But *Rees* was decided fourteen years before the Court established that even prisoners have rights against involuntary psychiatric commitments. *Vitek v. Jones*, 445 U.S. 480 (1980). And there was no indication in *Rees* that the defendant would be committed indefinitely, without even a review process (like respondent here); or that he had repeatedly sought his attorneys' removal and steadfastly opposed their mental illness strategy (like respondent here); or that the state courts had specifically considered his capacity to make such decisions and found him competent to do so (like respondent here).

By consigning respondent to a long-term psychiatric commitment, without even notice or hearing, the lower courts went far beyond a mere competency exam. Instead they effectively reversed respondent's presumption of competence, endorsed the attorneys' mental case strategy, and undermined the state court's determinations.

II. Respondent's attorneys, like the court below, disregard the import of *Vitek* on the appealability issue.

Respondent's attorneys spend the bulk of their appealability argument attempting to contrast this case with cases where defendants who were not already in jail were ordered committed for psychiatric care. Those cases presented an "important" question meriting interlocutory appeal, say the attorneys, because there was a diminution of liberty.

The attorneys never, however, address the impact of *Vitek*. The whole point of that decision is that involuntary psychiatric commitment represents a constitutionally significant diminution of liberty even if the defendant was already incarcerated. Accordingly, such a commitment is appealable under the collateral order doctrine, as at least one federal circuit has held. *United States v. Visinaiz*, 96 Fed. Appx. 594 (10th Cir. 2004) (unpublished).

Absent an argument on this point, respondent's attorneys instead attack the Commonwealth's standing here. They maintain that the Commonwealth just wants "to execute Mr. Pierce," and therefore cannot represent him. But the Commonwealth does not purport to represent respondent. As a party to this habeas proceeding, the Commonwealth is independently affected by the commitment order, which indefinitely delayed the proceedings and disregarded years of state court competency proceedings.

Left unanswered, however, is whether anyone is really representing respondent. The attorneys insist that they must be presumed to "have his interests at heart." But

why? Obviously respondent does not think so; and he is, still, deemed competent. The lawyers are undoubtedly better equipped than he to devise successful legal claims. But that is not the test.

Thus the important questions presented by this case: how should courts process an attorney's request for the long-term involuntary commitment of his habeas client? And (as the attorneys' standing argument would suggest) are the answers different where the sentence in question is death?

CONCLUSION

For the reasons set forth above and in the petition for certiorari, petitioners respectfully request that a writ of *certiorari* issue to review the decision below.

Respectfully submitted,

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